IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 2468 OF 2001

1. Sharad Jijaba Kakade)
2. Sandip Jijaba Kakade)
R/o Pimpalwadi,)
Tal. Junnar, Dist. Pune. .....) Petitioners.

versus

1. Land Acquisition Officer)
Pune.)
2. The State of Maharashtra .....) Respondents.

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Shri R.S.Apte for the petitioner.
Shri S.K.Chanchalikar AGP for State.

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CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 12TH JANUARY, 2005.

ORAL JUDGMENT ; (Per Palshikar, J.):

1. By this petition, the petitioner has challenged the order passed by the Additional Commissioner deliberately in exercise of his powers under section 48 of the Land Acquisition Act 1894.

2. Facts necessary for proper adjudication of this petition stated briefly are as under:

That the petitioners were members of the joint Hindu Family and the family had ancestral land which was recorded in the name of Bajirao Balaji Kakade who is the paternal uncle of the petitioners. Regular Suit No. 141/86 was filed by the said Bajirao Balaji Kakade in the year 1986 for partition and separate possession of ancestral property, which was till then held by the joint family. This suit was decreed ultimately in 1994 but even prior thereto requests were made for mutation and even the notice was sent on 23rd May 1997 to correct the revenue record by pointing out that the holding of the petitioner was less than eight acres.

3. A notification under section 11 of the Maharashtra Resettlement of Project Displaced Persons Act 1976 was issued in the year 1989 i.e. prior to institution of the suit for partition and separate possession. However ignoring this aspect that under section 16 therefore the acquisition even under the Land Acquisition Act of 1894 cannot take place in relation to a piece of land less than eight acres. Obviously the holding of the petitioner after partition in 1986 is less than eight acres and therefore notice was sent pointing out to the acquisition officer after issuance of section 4 of the notification that the lands of the petitioner are not liable to be acquired. This

representation was rejected on the ground that factual partition was not there and the revenue records were not corrected. Consequently the authority would go by the revenue record, with the result section 6 and 9 of the notification was issued thereafter. It is in these circumstances, that the present petition is filed assailing the action of the respondent, in including the land of the petitioner in the acquisition proceedings even after the notice issued in May 1997. The proceedings are still pending and petitioner has received notices under section 9 of the Act. In view of the clear legal position, we are unable to accept the contention of the State that there is no error in calculating the land of the petitioner for acquisition though there are less than eight acres. According to the State itself therefore, the correct law applicable is the Re-settlement Act of 1976 and yet they defend the action of ignoring section 16 of that Act. The State in this respect has clearly stated in its reply that:

> I say that the writ petition in question is ill-conceived at not maintainable in the eyes of law. The petitioners have made the mess of the facts regardless of the set of law applicable to the Land Acquisition

Proceedings challenged by this writ petition. I say that the correct law applicable to the present Law Acquisition Proceedings is the Maharashtra Resettlement of Project Displaced Persons Act, 1976 and the notification issued under section 11 of the above Act are the relevant provisions of law applicable in the matter of Land Acquisition proceedings. The petition therefore must succeed and is allowed. The respondents are directed to delete the holdings of the petitioner from the acquisition proceedings as the holding of the petitioner after the partition in 1986 is less than eight acres.

5. The petition therefore must suceed and is allowed. The respondents be directed to delete the holdings of the petitioner after the partition in 1986 from the acquisition proceedings as his land is less than eight acres.

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